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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/508,670	03/28/2000	FREDERIC BONTE	00060	7942

2338 7590 02/26/2003

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[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1617

DATE MAILED: 02/26/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/508,670	BONTE ET AL.
	Examiner Shahnam Sharareh	Art Unit 1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 December 2002.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.
- 4) Claim(s) 17-39 and 42-70 is/are pending in the application.
- 4a) Of the above claim(s) 26-34 and 42-69 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 17-25,35-39 and 70 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 26-34 and 42-69 are subject to restriction and/or election requirement.

#### Disposition of Claims

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

Response filed on December 11, 2002 has been entered. Applicant's election of species is set forth in Paper No. 12, filed on May 24, 2002. Accordingly, the search is directed to such species encompassing methods of improving cohesion between dermis and epidermis, comprising delivering to skin or hair a person in need thereof, a cosmetically effective amount of ellagic acid, a retinoid, and *pygeum africanum*. Claims 17-25, 35-39, 70 are directed to the elected species and are thus under consideration. Claims 26-34, 42-69 stand withdrawn from further consideration, because they are not directed to the elected species.

Any rejection not addressed in this Office Action is considered obviated

#### ***Response to Arguments***

Claims 17-25, 35-39, 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arima, in view of Soler et al US Patent 6,113,926 ("Soler") (PTO-892, Paper No. 5) and Seguin et al US Patent 4,549,990 ("Seguin") (PTO-892, Paper No. 5).

Applicant's arguments directed to this rejection have been fully considered but are not persuasive. Applicant primarily argues that the instant method of use was not taught in the primary reference and that none of the secondary references suggest the use of ellagic acid to improve collagen VII synthesis and that the secondary references do not cure the defects of the primary reference.

First, Examine points out that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800

F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The instant rejection is based on the combined teachings of the references, and such combination provide for all limitations of the instant claims. Accordingly, the rejection is proper.

Second, Applicant's arguments that "the secondary do not teach the use of ellagic acid in improving collagen VII synthesis," is not persuasive, because it is not commensurate with the scope of the pending claims. The independent claims presented here does not have any such requirement. Following the election of species set forth in Paper No. 12, the are merely limited to methods of improving cohesion between dermis and epidermis employing ellagic acid, a retinoid, and suitable plant extract. The combined teachings of the references provide for such limitations and thus, render the instant claims obvious.

Further, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). As set forth in previous Office Action, Arima teaches topical compositions comprising ellagic acid and a teritonin (retinoid) derivative such as vitamin A and various types of plant extracts for beneficial therapeutic use. (see col 5, lines 1-20).

Even, Applicants, themselves have acknowledged that other agents can provide for collagen synthesis, leading to improved demaloeplidemal junctions. See for example, Applicant's arguments set forth in response to the written description rejection under 35 USC 112, 1<sup>st</sup> paragraph, clearly acknowledges the knowledge in the art that

administration of other agents such as Tretinoin (retinoids) improves dermaloepidermal junction (see abstract for Gichrest BA, J.Am.Acad.Dermatol 1997 Mar; 36 (2pt2)S27-36.). Accordingly, in the instant case, the improvement in collagen synthesis is not solely limited to the use of elagic acid, rather the combination of all elements of the claims.

In the instant case, all cited reference teach the beneficial use of combining the instantly claimed component for cosmetic care. Further, it is well established in the art and as recognized by Applicants, that at least one ingredient of the instant claims, namely, retinoids, improve the dermo-epidemral junction of the skins. Thus, it would have been obvious to one of ordinary skill in the art at the time of invention to add *pygeum africanum* extract of Soler to the external compositions of Arima, because as suggested by Arima itself and taught by Soler and Seguin, the ordinary artisan would have reasonably expected to improve the therapeutic benefits of Arima's compositions by adding a suitable herbal extract such as *pygeum africanum* and use it for cosmetic care to improve dermo-epidermal junction.

### ***Conclusion***

No claims are allowed. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahnam Sharareh whose telephone number is 703-306-5400. The examiner can normally be reached on 8:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, PhD can be reached on 703-308-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1123.

ss  
February 24, 2003



RUSSELL TRAVERS  
PRIMARY EXAMINER  
GROUP 1200